

Entered: 07-14-2007

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

WINDELL A. TYLER,

Petitioner,

Civil No. 07-892-TC

v.

FINDINGS AND
RECOMMENDATION

CHARLES DANIELS,

Respondent.

COFFIN, Magistrate Judge.

Petitioner, a federal inmate in the custody of the BOP, filed a petition under 28 U.S.C. § 2241 alleging that respondent is violating his rights under U.S. v. Gunning, 401 F.3d 1145 (9th Cir. 2005) by their management of his inmate financial contract and requests the cessation of all IFRP collection activity.

Respondent's answer concedes petitioner's position that pursuant to U.S. v. Gunning an inmates restitution payment plan cannot be delegated to the BOP by the court.

Respondent's Answer indicates that the "BOP will cease collection activity pursuant to the IFRP and will identify [petitioner] as IFRP exempt. This action will place inmate Tyler in the same position as if he were identified as IFRP compliant." Respondent's Answer (#7), p. 2.

Respondent's Answer (#7) establishes that petitioner has been afforded all of the relief he is entitled to under 28 U.S.C. § 2241. Therefore, Petitioner's Petition (#2) should be denied as moot.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have ten days from the date of service of a copy of this recommendation within which to file specific written objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the

factual issue and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judges's recommendation.

DATED this 16th day of October, 2007.



Thomas M. Coffin
United States Magistrate Judge